

Remarks/Arguments:

Double Patenting Rejections

Claims 1-8, 10-12, 15-17, 21 and 61-63 stand rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-6 of U.S. Patent No. 6,695,846. While applicants traverse that the pending claims are obvious variants of claims 1-6 of U.S. Patent No. 6,695,846, a terminal disclaimer with respect to U.S. Patent No. 6,695,846 is submitted herewith as an administrative expedient.

Applicants note the provisional double patenting rejection based on applicants' U.S. Patent Application No. 10/401,997. Applicants respectfully submit that such double patenting rejection will be addressed upon allowance and issuance of one or more of the applications.

Claim Rejections Under 35 U.S.C. §§ 102 and 103

Claims 1-8 and 10, 15-17 and 61 stand rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 6,138,550 (Michelson). Claim 61 stands rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 5,607,426 (Ralph et al.). Claim 21 stands rejected under 35 U.S.C. §103(a) as unpatentable over Michelson in view of U.S. Patent No. 6,602,255 (Campbell et al.). Applicants respectfully traverse these rejections.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." M.P.E.P. §2131 *citing Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

"To establish a *prima facie* case of obviousness, ... the prior art reference (or references when combined) must teach or suggest all the claim limitations." M.P.E.P. §2143. Additionally, as set forth by the Supreme Court in *KSR Int'l Co. v. Teleflex, Inc.*, No. 04-1350 (U.S. Apr. 30, 2007), it is necessary to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the prior art elements in the manner claimed.

Independent claim 1 recites a bone plate assembly comprising: "a base plate including at least one aperture defining a through opening extending through the base plate; and a screw retaining mechanism mounted and rotatable within said aperture between locked and unlocked positions relative to said through opening for preventing the bone screw from backing out from

said base plate, wherein said screw retaining mechanism includes a center axis and an opening eccentric to said center axis and wherein said screw retaining mechanism is positioned within the aperture such that the center axis extends through the through opening and rotatable within said aperture about said center axis between said locked and unlocked positions, wherein said opening of said screw retaining mechanism is eccentric with said through opening of said base plate when in said locked position and said opening of said screw retaining mechanism is concentric with said through opening of said base plate when in said unlocked position."

Michelson does not teach each limitation each and every limitation of the claimed invention. The Office Action provides three interpretations of Michelson, however, in each interpretation, the central axis of the retaining mechanism is offset from the through opening and does not extend through the through opening. See Fig. 6 wherein the central axis of locking element 20 is offset from the screw receiving holes 6 and 8; Fig. 28 wherein the central axis of locking element 412 is offset from the screw receiving holes 408; and Fig. 67 wherein the central axis of locking element 522 is offset from the screw receiving holes 528. The locking elements of Michelson are not positioned with their central axis extending through the through hole and rotatable within the apertures as recited in independent claim 1. Instead, the locking elements are mounted in distinct recesses that are offset from the screw receiving holes.

The cited references, alone or in any reasonable combination, fail to teach each and every limitation of the claimed invention. It is respectfully submitted that independent claim 1 is in condition for allowance. Claims 2-8, 10, 15-17 and 21 each depend from claim 1 and are therefore allowable for at least the reasons set forth above.

Claims 13 and 14 are withdrawn from consideration, however, each of these claims depends from generic claim 1. Applicants respectfully request reconsideration and allowance of claims 13 and 14 upon allowance of generic claim 1.

Independent claim 61 recites a bone plate assembly comprising "a base plate including at least one hole extending therethrough; insert means operatively engaged within said at least one hole for accommodating the bone screw and a screw retaining mechanism mounted and rotatable within said insert means between locked and unlocked positions relative to said insert means for preventing the bone screw from backing out from said base plate."

Although Michelson is cited against claim 61, there is no suggestion in the Office Action that Michelson teaches an insert means

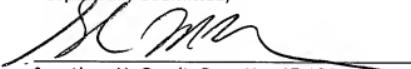
The cap portion 142 of Ralph et al. is now cited as a screw retaining means that is rotatable between locked (when inserted) and unlocked positions (when rotated out). This interpretation of Ralph et al. does not include any insert means. Furthermore, even if the socket portion 132 was reasonably interpreted as an insert means, the cap portion 142 is not rotatable within the socket portion 132 between locked and unlocked positions. The Office Action acknowledges that the cap portion 142 is must be rotated out to achieve an unlocked position.

The cited references, alone or in any reasonable combination, fail to teach each and every limitation of the claimed invention. It is respectfully submitted that independent claim 61 is in condition for allowance.

It is respectfully submitted that each of the pending claims is in condition for allowance. Early reconsideration and allowance of each of the pending claims are respectfully requested.

If the Examiner believes an interview, either personal or telephonic, will advance the prosecution of this matter, the Examiner is invited to contact the undersigned to arrange the same.

Respectfully submitted,



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Attachments: Terminal Disclaimer

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